

REMARKS

Claims 22-41 are pending in the present application. The Examiner has required an election in the present application between:

Species 1, Figure 1;

Species 2, Figure 10;

Species 3, Figure 15;

Species 4, Figure 19;

Species 5, Figure 20;

Species 6, Figure 21;

Species 7, Figure 22;

Species 8, Figure 23; and

Species 9, Figure 24.

For the purposes of this election of species requirement, applicants hereby elect Species 4-9, Figures 19-24 (and 25 and 26, which illustrate the system in combination) with traverse. Claims 22-41 are readable on the elected species.

At the outset, it is pointed out that Species 1-3, Figures 1, 10 and 15 are not claimed in the present application. Therefore, Species 1-3 are not elected. In addition, Figures 19-24 are not mutually exclusive. It is fundamentally improper to require an election of species between Figures 19-24. In this regard, the attention of the Examiner is directed to MPEP § 806.04(f) which points out that claims to be restricted to species must be mutually exclusive, i.e., for claims to be properly restricted to different species, those claims must recite the mutually

exclusive characteristics of such species. However, each of claims 22-41 recite various aspects of the same invention and are therefore not mutually exclusive. Accordingly, the election of species with respect to claims 22-41 is improper and should be withdrawn.

As the Examiner will note, Figures 19, 20 and 21 illustrate several different parts of the same system recited in independent claims 22 and 41. Specifically, Figure 19 illustrates an expansion screw 116, Figure 20 illustrates a rod 112 and Figure 21 illustrates a coupling 111, which are shown together in combination and combined "action" in Figures 25 and 26. As can be seen from Figure 25, each of the elements 116, 112 and 111 are used together in the same system. They are not mutually exclusive species are asserted by the Examiner. It is also noted that all of the elements 116, 112 and 111 are recited in independent (and generic) claims 22 and 41. In view of this, Figures 19-21 must remain in the same application.

With regard to Figures 22 and 24, these figures illustrate two different types of hooks. Figure 22 illustrates one type of hook, in particular a pedicle hook 132, as claimed in claim 39. Figure 24 illustrates a second type of hook, in particular a laminar hook 131 as claimed in claim 38. A third type of hook is illustrated in Figure 26; however, Figure 26 is not indicated as one of the species to elect from. Figure 26 illustrates an open tail hook 118 as claimed in claim 40. Figures 22 and 24 (and the hook 118 in Figure 26) are mutually exclusive species. However, all of the different species could presumably be used in the same system, as illustrated in Figure 26 (note the hook 115 at the top of the rod 112 and the hook 118 at the bottom of the rod being used in the same system in Figure 26). In view of this, Applicants submit that all of the three species should be examined in the present application, and the Examiner should not require election at this time. However, if the Examiner persists in an election between these three species (and an election of one of claims 38-39), Applicants would be willing to do so, if the Examiner presents a proper election of species requirement that requires election between the different hooks illustrated in Figures 22, 24 and 26.

With regard to Figure 23, this figure illustrates the open swivel 113, which is part of the ring-type connectors shown in Figure 26 as the top most and second from the top most

embodiments. The swivel 113 is part of the connectors between the connecting elements and the rod (see the explanation of its function on page 15, third paragraph and Figures 25 and 26 for recognizing the exact positions thereof). It is noted that there are several different swivels illustrated in Figure 26 (and Figure 23). If the Examiner persists in an election between these different swivels, Applicants would be willing to elect between them, if the Examiner presents a proper election of species requirement that requires election between the different swivels illustrated in these Figures.

In view of the above, the election of species requirement is improper and should be withdrawn. Reconsideration, withdrawal of this requirement, and examination of all pending claims, i.e. claims 22-41, are respectfully requested.

Favorable action on the present application is earnestly solicited.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul C. Lewis Reg. No. 43,368 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Application No. 10/660,685
Reply dated July 30, 2008
Reply to Office Action dated May 30, 2008

Docket No.: 2644-0105P

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: **July 30, 2008**

Respectfully submitted,

By 

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